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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re TATIANA J., et al., Persons Coming Under the Juvenile Court Law.	
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. VINCENT J., Defendant and Appellant.	D074769 (Super. Ct. No. NJ14726A-B)

APPEAL from a judgment of the Superior Court of San Diego County, Michael J. Imhoff, Commissioner. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Emily Harlan, Deputy County Counsel, for Plaintiff and Respondent.

Vincent J. appeals the summary denial of his Welfare and Institutions Code section 388[1] petition to place his two special needs children with their paternal aunt or to continue the section 366.26 hearing until the aunt's home was approved through the Resource Family Approval Program. (§ 16519.5.) He contends the juvenile court erred when it determined he was not entitled to a relative placement hearing under *In re Isabella G*. (2016) 246 Cal.App.4th 708 (*Isabella G*.) because of an incident that occurred during the children's overnight visit with their aunt, resulting in the supervision of aunt's visits with the children. Vincent argues the findings and orders resulting in the denial of a hearing on his petition, and the orders terminating parental rights, should be reversed. (§ 366.26.)

In *Isabella G*., this court held that when a relative requests placement of the child prior to the dispositional hearing, and the Agency does not timely complete a relative home assessment, the relative requesting placement is entitled to a hearing under section 361.3 without having to file a section 388 petition. *Isabella G*. was decided prior to the statewide implementation of the Resource Family Approval Program (RFA). (§ 16519.5, subd. (b).) The RFA provides a unified approval process to replace the multiple processes to approve foster care homes, relatives and nonrelative extended family members, and adoptive homes for the placement of dependent children. (§§ 16519, 16519.5.) The RFA has two parts—a home environment assessment and a permanency assessment. (§ 16519.5, subd. (c)(1).) Those assessments are proving to be time

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1 Further statutory references are to the Welfare and Institutions Code.

consuming. As the juvenile court noted, the dependency timelines were becoming "increasingly difficult" under the RFA.[2]

We conclude the juvenile court erred when it based its refusal to grant a section 361.3 hearing on an incident that did not result in the denial of the relative's resource family application. Consistent with the Legislative preference to place a dependent child in the care of a suitable relative and this court's holding in *Isabella G.*, we hold that where a relative has promptly requested the child's placement and initiated the RFA process, the juvenile court should set a hearing under section 361.3 as soon as the relative's family home environment assessment has been approved. The court may also continue the section 361.3 hearing until the permanency assessment has been completed. (§ 352.)

We further conclude that in view of the particular and singular facts of this case, even if the relative's home had been approved and the court had assessed the placement under the section 361.3 factors, the children's exceptional needs and poor prognoses would necessitate their continued placement with their highly skilled and conscientious caregivers. Thus, any error did not result in a miscarriage of justice. (Cal. Const., art. VI, § 13.) We therefore affirm the findings and orders of the juvenile court.

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[2] The new RFA process has resulted in extensive delays in approving relatives for placement due to the processing backlog. (See, "California Bills Target Lengthy Foster Parent Approval Program," <https://chronicleofsocialchange.org/child-welfare-2/2018/03/07/california-bills-target-lengthy-foster-care-approval-process> [as of April 29, 2019], archived at <https://perma.cc/JF36-AKVX>.) Because of these extensive delays, as also noted in this record, the Legislative preferences to thoroughly screen relative homes and to promptly place dependent children in the care of a suitable relative appear to be on a collision course.

FACTUAL AND PROCEDURAL BACKGROUND

Twelve-year-old Tatiana J. and eight-year-old Elizabeth J. are the children of Vincent J. and A.R.[3] The children have a severe neurological disorder known as Leigh syndrome, which results in the progressive loss of cognitive and motor abilities, and diminished life expectancy. Tatiana and Elizabeth are both nonambulatory and need assistance with feeding, bathing, and dressing.

The children first came to the attention of child welfare agencies in 2011, when six-week-old Elizabeth was hospitalized and was found to have been exposed to methamphetamine. Vincent, who was noticeably under the influence of drugs at the hospital, was arrested on outstanding warrants. The children were adjudicated juvenile court dependents and were placed with their paternal aunt, E.J. (Aunt). When Vincent was released from prison, he gradually took over parenting responsibilities from Aunt and the juvenile court returned the children to his care in February 2013.

In January 2017, police officers executed a search warrant at Vincent's home and found methamphetamine, drugs, and drug sales paraphernalia in his bedroom. Vincent was arrested on drug charges and willful cruelty to a child. Aunt calmed the children and accompanied them to Rady Children's Hospital for medical clearance.

Vincent asked the social worker to place the children with Aunt. Aunt told the social worker she wanted to care for the children but was currently living in a studio apartment. She had suspected Vincent was using drugs because he was losing weight and

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[3] The children's mother, A.R., was briefly in contact with the social worker but did not participate in the children's dependency proceedings.

the children were looking thin. He had stopped allowing them to come to her house. Aunt had been trying to convince Vincent to put the children in her care. She previously cared for them for almost two years.

Elizabeth's school aide, Tara A., also offered to care for the children. Tatiana and Elizabeth agreed to live with Tara until they could live with Aunt. Vincent said he was "okay" with the children living with Tara until they could be placed with Aunt. In February 2017, the social worker submitted referrals for family resource assessments of Aunt, Tara, and another paternal relative. The San Diego County Health and Human Services Agency (Agency) detained the children with Tara (and her husband) (together, Caregivers) on March 21, 2017.

The jurisdictional and dispositional hearings were held on March 27, 2017. Vincent submitted on the section 300 petitions. The court removed the children from his custody and placed them with Tara, who was approved for placement as a nonrelative extended family member (NREFM). The court ordered a plan of reunification services for Vincent.

In September, the social worker reported that Vincent did not participate in any court-ordered services and had not visited the children in two months. Tatiana and Elizabeth were doing well. Tara took the children to their medical and therapeutic appointments and advocated for their educational needs. Aunt was looking for a new home to accommodate the children and was pursuing placement.

The children's court-appointed special advocate (CASA) said the children were happy and safe, and they were receiving the care they needed in their current placement.

They loved spending time with Aunt. Tatiana wanted to live with Aunt. Elizabeth expressed a preference to stay with Tara.

In December, Vincent asked the social worker why it was taking so long to place the children with Aunt. The social worker responded by asking why he was not working on his case plan.

In reports prepared for the 12-month review hearing in March 2018, the social worker reported: Aunt was participating in the RFA process. She wanted to care for the children and was willing to become their guardian. Vincent had not started any of the services in his case plan. He last saw the children at their birthday party in December 2017.

CASA reported the children continued to visit Aunt. Tara took the children to 13 different medical practitioners for their various medical needs, including a neurologist, cardiologist, ophthalmologist, pediatrician, dentist, and therapist. Tara expressed concerns about Tatiana and Elizabeth's relationship with each other. Tatiana could be very controlling and had threatened Elizabeth.

At the 12-month review hearing in April 2018, the court terminated reunification services and set a section 366.26 hearing. Shortly after the hearing, the Agency allowed the children to stay with Aunt for a weekend visit. One night, Aunt, who was sleeping in the same bed with the children, was awakened by their laughter. When she asked what was going on, they described engaging in a sexual "game" with each other. Aunt told the children to keep it a secret, otherwise, they would not be able to visit her. The children

disclosed the incident to a mandated reporter and the Agency deferred all overnight visitation with Aunt pending investigation.

The social worker was concerned by Tatiana's behavior toward Elizabeth. In addition to the sexual "game," which Tatiana reportedly instigated, Tatiana had kicked and hit her sister, and placed a pillow over her sister's face. The social worker said the issues were being addressed in therapy. If the behavior continued, the Agency would consider separating the children.[4]

At the 12-month review hearing in April 2018, the juvenile court terminated Vincent's reunification services and scheduled a hearing to select and implement the children's permanency plans. (§ 366.26.)

In May and June, the social worker discussed adoption with Tatiana and Elizabeth. In May, Tatiana said she wanted Aunt to adopt her. In June, she wanted the Caregivers to adopt her. Elizabeth consistently said she wanted to be adopted by the Caregivers but wanted to visit Aunt.

Vincent was released from prison in June. He met with the social worker and asked why the children had not been moved to Aunt's home. Vincent was honest about his substance abuse problems and said he was not seeking visitation with his children.

In July, in reports prepared for the section 366.26 hearing, the social worker reported that Tara had taken Tatiana and Elizabeth for botox injections, which alleviated muscle rigidity and increased mobility. In addition to their many medical appointments,

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4 In May 2018, counsel for the minors declared a conflict. The juvenile court appointed new counsel for each child.

the children had occupational and physical therapy once a month. Tatiana saw a counselor to alleviate her symptoms of posttraumatic stress disorder. Elizabeth was engaged in play therapy to reduce her frequent nightmares. Tara attended therapy every other week to assist in the children's progress. The children still needed feeding assistance, Elizabeth more so than Tatiana.

Caregivers wanted to adopt Tatiana and Elizabeth. Tara had been certified for 10 years to provide care to medically fragile children. Her husband had been recently certified to provide respite care to medically fragile children.

Aunt had been undergoing the RFA process for a year and did not have an approved home. The process was further delayed by the April child abuse referral.

CASA reported that Elizabeth wanted to be adopted by Caregivers. Tatiana vacillated between wanting to be adopted by Caregivers or live with Aunt. The children were very happy in Caregivers' home. Caregivers said they were willing to adopt both children, if that was what the children wanted, or provide long-term foster care. In July, Tatiana said she hoped the court would give Aunt more time to be approved for placement because she wanted to live with her.

CASA recommended the children remain with Caregivers and have supervised visits with Aunt. From her discussions with the children, CASA believed they were in the best physical health they had ever been, in large part due to Caregivers' diligence. CASA attended a visit between Aunt and the children and observed that Aunt appeared to be physically limited in what she was able to do for the children. She dropped Tatiana while assisting her into the house and then yelled at her for it. Tatiana and Elizabeth each

told Tara that Aunt had asked them to change their account about their activities during their overnight visit with her in April. The children exhibited difficult behaviors at home and at school after their visits with Aunt.

At a pretrial conference on August 9, Vincent and Aunt were present. Vincent asked the court to update all parties as soon as there was any further information about Aunt's resource family assessment. The social worker had told Vincent's attorney there was no timeframe on a decision to approve or deny Aunt's assessment. The court said the timeframes were becoming increasingly difficult and that it hoped the Agency would expedite Aunt's assessment.

Vincent and Aunt were present at a pretrial conference on September 11. Vincent said Aunt had been waiting for her home to be approved or denied for almost a year, and the social worker had indicated there was nothing the Agency could say on the subject. The Agency's counsel told the court the home evaluation was in process and the Agency would notify the relative once a decision was made.

In an addendum report filed on September 19, the social worker reported that Tatiana and Elizabeth were continuing to do well in their placement. They referred to Caregivers as "mom" and "dad" and wanted to be adopted by them.

On September 19, the day of the section 366.26 hearing, Vincent filed a section 388 petition asking the court to place the children in Aunt's care or to continue the section 366.26 hearing until the resource family assessment was completed. He stated Aunt was able to provide a permanent placement for the children and the Agency had unreasonably delayed Aunt's evaluation, denying Vincent's due process right to have his preference for

the children's placement considered by the court. Placement with Aunt was in the children's best interests because they had a positive relationship with her and they should be with a family member who was committed to caring for them their entire lives.

Counsel for the minors opposed the section 388 petition, stating the RFA process could take from six to eight months. While Aunt came forward very early in the case, it took her a few months to get started with the process and she did not have an approved home.

The Agency's counsel argued the petition for placement was not ripe until the RFA process was completed. The delay was not attributable to the Agency because Aunt needed some time to find a suitable home and had to address some medical issues before the RFA could proceed. In April, there was a referral that caused the RFA unit to take extra steps to ensure the approval of Aunt's home. The Agency did not know whether Aunt's home would be approved.

Vincent said Aunt was prepared to testify she came forward early in the case and had done everything the Agency had directed her to do since that time. They would have liked to have presented an approval of Aunt's home, but the length of time it was taking to complete the RFA process "puts the parents in a situation where they have really no recourse to exercise their rights with regard to relative placement" other than by filing a section 388 petition. Father's counsel said Aunt was prepared to testify about the RFA process and asked the court, at minimum, to grant a continuance of the section 366.26 hearing.

The juvenile court said under *Isabella G.*, it was required to seriously consider a postdispositional request for placement if the relative's request was made prior to the dispositional hearing. However, *Isabella G.* did not discuss the import, if any, of intervening developments that had impacted the timeframe for the home assessment. In April, the Agency began overnight visits for the children at Aunt's home. Unfortunately, a child abuse report was generated. The court said, "Presumably [the report] was founded. I don't necessarily have that information, but I gathered, from reading the reports on its face, those allegations are very significant and serious."

The juvenile court found to the extent section 388 applied, the petitioner did not meet his burden to show changed circumstances and best interests of the children, reasoning, "If there cannot be overnight visits because of a defined event that implicated [the] best interests of the children or their safety, it follows that placement could not be considered under those circumstances." The court denied Vincent's section 388 petition, finding that a section 361.3 hearing was not required under the circumstances, and implicitly denied the alternative request to continue the section 366.26 hearing.

The court then turned to the section 366.26 hearing. After argument, the court terminated parental rights and designated Caregivers as the children's prospective adoptive parents.

DISCUSSION

I. *Standing*

The Agency contends Vincent lacks standing to appeal the relative placement orders because he does not demonstrate that reversing the order denying the section 388

petition for relative placement would have advanced his argument against terminating parental rights. The Agency argues Vincent is not an "aggrieved person" because he does not demonstrate that "his rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision." (*In re K.C.* (2011) 52 Cal.4th 231, 236 (*K.C.*).)

Where the propriety of terminating parental rights depends partly on the child's placement, " 'a placement decision . . . has the potential to alter the court's determination of the child's best interests and the appropriate permanency plan for that child, and thus may affect a parent's interest in his or her legal status with respect to the child.' "(*K.C.*, *supra*, 52 Cal.4th at p. 236, quoting *In re H.G.* (2006) 146 Cal.App.4th 1, 18 (*H.G.*).) We liberally construe the issue of standing and resolve doubts in favor of the right to appeal. (*H.G.*, at p. 9.)

We reject the Agency's argument the filing of the section 388 petition on the day of the section 366.26 hearing is a factor in determining whether Vincent has standing to appeal the summary denial of his petition. This was not a last minute request for relative placement. Vincent asked the Agency to place the children with Aunt the day they were removed from his care. He repeatedly raised the issue with the social worker. The court had not yet considered his request by the time of the section 366.26 hearing. Vincent asserted the Agency's delay in approving Aunt's home violated his right as a parent to have his placement preferences considered by the court. (See *K.C.*, *supra*, 52 Cal.4th at p. 236; *In re Marilyn H.* (1993) 5 Cal.4th 295, 306 (*Marilyn H.*) [all parents, unless and until their parental rights are terminated, have an interest in their children's

'companionship, care, custody and management].) The delay in completing Aunt's resource family assessment gave him no other opportunity to bring the issue of relative placement to the juvenile court's attention prior to the section 366.26 hearing.

The record shows Aunt had cared for the children for two years and continued to help with their care to the extent she was allowed after Vincent regained custody. Tatiana repeatedly stated she wanted to live with Aunt. The social worker reported that Aunt was continuing to seek placement of Tatiana and Elizabeth and was interested in a long-term plan of guardianship. In addition, Vincent objected to the Agency's recommendation of adoption as the children's permanency plans and the termination of his parental rights.

Liberally construed, the record shows that a hearing on the request for relative placement may have advanced Vincent's argument against termination of parental rights because Aunt preferred a permanent plan other than adoption. (*K.C.*, *supra*, 52 Cal.4th at p. 236.) A hearing would also have provided Vincent the opportunity to be heard on the issue of his children's placement, which he raised continuously throughout his children's dependency proceedings. We conclude that Vincent has standing to appeal the summary denial of his section 388 petition.[5]

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5 The Agency's motion to dismiss is denied.

II. *The Relative Placement Preference*

A. *Overview*

If a dependent child is removed from his or her home, there is clear Legislative preference for placement with a relative, if the home is appropriate, and the placement is in the child's best interests. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 320 (*Stephanie M.*).) The relative placement preference under section 361.3 applies throughout the reunification period. It also applies after the reunification period where the relative has made a timely request for placement during the reunification period, and the child welfare agency has not met its statutory obligations to consider and investigate the relative seeking placement. (*In re Maria Q.* (2018) 28 Cal.App.5th 577, 594-595 (*Maria Q.*).) The child welfare agency's assessment of the relative is "subject to the juvenile court's consideration of the suitability of the relative's home and the best interests of the child." (*Stephanie M.* at p. 320; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023 (*Cesar V.*) [juvenile court exercises its independent judgment concerning the relative's request for placement].)

Vincent contends the juvenile court erred in failing to review the relative placement request under section 361.3. He points out the request for placement was made early in the proceedings and the Agency's resource family assessment continued for more than a year without resolution. Vincent asserts the circumstances were similar to those in *Isabella G.* and he was entitled to a hearing on placement under section 361.3

without having to file a section 388 petition.[6] (*Isabella G.*, *supra*, 246 Cal.App.4th at p. 712.)

Before we address Vincent's claims, we discuss the Agency's arguments the juvenile court did not err in declining to consider relative placement under section 361.3 because Vincent (1) did not appeal or contest any of the prior placement orders and (2) waived his right to appeal the denial of his request for relative placement because he agreed to the children's placement with Caregivers at the dispositional hearing.

B. *A Dispositional Placement Order Is Not A Final Order; Vincent Did Not Waive His Right to Raise the Placement Issue on Appeal*

The Agency's argument that the juvenile court may not consider the request of a parent or relative for placement of the child after the dispositional hearing, unless the parent has appealed from the prior placement order is without merit. Moreover, the record belies the Agency's argument that Vincent has forfeited his right to raise the placement issue on appeal because he consented to the children's placement with the caregivers.

A prior placement order, particularly a dispositional placement order, is not a final order. The Legislature states the relative seeking placement shall be the first placement

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6 Under section 388, the petitioning party has the burden of showing, by a preponderance of the evidence, there is a change of circumstances or new evidence, and the proposed modification of the prior order is in the child's best interests. (Welf. & Inst. Code, § 388; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Amber M.* (2002) 103 Cal.App.4th 681, 685.) The court must liberally construe the petition in favor of its sufficiency. (*Marilyn H.*, *supra*, 5 Cal.4th at p. 309.) The petitioner "need only make a prima facie showing to trigger the right to proceed by way of a full hearing." (*Id.*, at p. 310.)

to be considered and investigated. (§ 361.3, subd. (c)(1).) When a relative has requested placement prior to the dispositional hearing, section 361.3 does not limit the county "social worker's ability to place a child in the home of a relative or nonrelative extended family member *pending consideration* of other relatives who have requested preferential consideration." (§ 361.3, subd. (a)(8)(B)(b) [italics added].) Placement orders are subject to review by the juvenile court during the proceedings and are governed by statutes designed to protect the child while allowing the parent's wishes to be considered. (§§ 361.3, 388, 366.21, 366.22.) The relative placement preference applies until the section 366.26 hearing. (*Maria Q., supra*, 28 Cal.App.5th at pp. 594-595; see also *Cesar V., supra*, 91 Cal.App.4th at p. 1032 [Legislature did not intend to limit relative placement preference to reunification period]; *In re Joseph T.* (2008) 163 Cal.App.4th 787, 794 [relative placement preference applies after dispositional hearing where no new placement is required]; *In re R.T.* (2015) 232 Cal.App.4th 1284, 1300 [relative placement preference applies throughout the reunification period].) In addition, if they have not previously requested a section 361.3 hearing, a parent or relative may petition the court to place the child with the relative under section 388. (§ 388, subd. (b)(1).) Thus, we reject the Agency's argument the juvenile court may not modify a dispositional placement order unless a parent has appealed from that order.

Moreover, contrary to the Agency's assertion that Vincent consented to his children's placement with Tara, the record shows that Vincent consented to the children's *temporary placement* with Tara pending the completion of Aunt's resource family assessment. In the jurisdiction/disposition report dated February 7, 2017, the social

worker said she had submitted a family resource assessment referral for Aunt. The parties agreed to place the children with the Caregivers until Aunt's home was approved and the court could consider the request for relative placement under section 361.3. The children also consented to their placement with Tara under those conditions. Thus, we reject the Agency's argument that because Vincent consented to the children's placement at the dispositional hearing, he waived his right to raise the issue on appeal.

C. *The Juvenile Court Must Exercise Its Oversight Role to Ensure A Timely Hearing on a Request for Relative Placement Under Section 361.3*

Vincent argues the juvenile court refused to follow the procedures this court set forth in *Isabella G.* and thus abused its discretion. He contends Aunt did everything the Agency required of her to complete the RFA and blames the Agency for the delay in completing her RFA. Vincent states the juvenile court is required to exercise its independent judgment in considering the child's placement with a relative and should have required the Agency to complete its assessment of Aunt's home. (§ 361.3.)

The Agency contends this case does not fall within *Isabella G.* because, here, the social worker made a good-faith attempt to evaluate Aunt's home and Aunt was responsible for the delay in completing her RFA. The Agency further contends the juvenile court reasonably inferred it could not place the children with Aunt because the Agency had disallowed overnight visitation. It further argues the juvenile court did not err in denying Vincent's section 388 petition because he made only conclusory statements about changed circumstances and best interests of the children.

Although there are similarities between this case and *Isabella G.*, the procedural postures of the cases are different. In *Isabella G.*, the Agency ignored the relatives' requests for the child's placement during and after the reunification period. The juvenile court granted the relatives' section 388 petition for a section 361.3 hearing notwithstanding the fact their home had not yet been approved for the child's placement. The Agency promptly assessed and approved the relatives' home prior to the section 361.3 hearing. (*Isabella G.*, *supra*, 246 Cal.App.4th at pp. 714-715.) The juvenile court then erroneously denied the relatives' request for placement under section 388, instead of assessing the relative placement under the factors described in section 361.3. (*Isabella G.* at p. 723.)

Here, the juvenile court summarily denied the parent's section 388 petition for a hearing under section 361.3, finding that the children could not be placed with Aunt because there had been an intervening act implicating the children's safety and the Agency had imposed supervised visitation.[7] This is not the appropriate standard to determine whether to grant requests for a section 361.3 hearing or a continuance to allow a section 361.3 hearing to be held upon completion of the relevant portion of the relative's resource family assessment.

When the Agency has not completed a relative's resource family assessment (and therefore nothing has changed), a section 388 petition is not the best vehicle to bring the

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[7] The court also faulted Vincent for not raising the issue prior to the date of the section 366.26 hearing. However, the record shows that Vincent raised both the relative placement issue and the length of time it was taking the Agency to complete Aunt's RFA at hearings in August and September.

issue to the attention of the juvenile court. Requiring a party who is seeking review of a relative's request for placement to prove that the relative has been approved for placement creates a "classic catch-22." (*Ung v. Koehler* (2005) 135 Cal.App.4th 186, 204 [statutes should be construed to avoid the absurdity of creating a catch-22]; see, *People v. Luttenberger* (1990) 50 Cal.3d 1, 16 [as the People would have it, the catch-22 predicament would apply here to defeat any effort by the defendant to obtain a hearing, since he could rarely make anything other than a conclusory statement about inaccuracies in the affidavit if he is not allowed access to matters within the prosecution's control without more than a necessarily conclusory statement as to his need for the data].) We therefore construe Vincent's section 388 petition as a special motion to bring issues concerning a pending request for relative placement to the attention of the juvenile court and to continue the section 366.26 hearing until Aunt's RFA was sufficiently complete to allow the court to consider the placement request.

Section 361.3 "command[s] that relatives be assessed and considered favorably, subject to the *juvenile court's* consideration of the suitability of the relative's home and the best interests of the child." (*Stephanie M.*, *supra*, 7 Cal.4th at p. 320 (italics added).) The court's responsibility to make an independent determination extends to a request by a relative for placement of the child, notwithstanding the agency's position on placement. (Welf. & Inst. Code, § 361.3; *Cesar V.*, *supra*, 91 Cal.App.4th at p. 1033; *In re Esperanza C.* (2008) 165 Cal.App.4th 1042.) Significantly, *a prior child protective history does not bar a relative from being evaluated and considered for placement of a dependent child under section 361.3*. (*Cesar V.*, at p. 1033; *In re Antonio G.* (2007) 159

Cal.App.4th 369, 378.) The juvenile court has a special responsibility to the child as *parens patriae* and must look to the totality of the child's circumstances when making decisions regarding the child. (*In re Chantal S.* (1996) 13 Cal.4th 196, 201 (*Chantal S.*).)

In accordance with this legal framework, the juvenile court should not have summarily denied a request to be heard on the issue of relative placement because *the Agency* had imposed conditions of supervised visitation on Aunt. The Agency's visitation conditions are subject to review by the juvenile court. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1010 [role of social services agency in dependency proceedings is subject to the juvenile court's supervision and control]; see generally, *Chantal S.*, *supra*, at p. 201 [court has a responsibility to consider the totality of the child's circumstances and make an independent determination].) Thus, the court erred when it ruled that the Agency's decision to impose supervised visitation relieved the court of its obligation to make an independent placement determination under section 361.3.

The Agency argues the juvenile court did not err in denying Vincent's petition because Aunt's home had not been approved for the children's placement at the time of the hearing. An approved resource family has successfully met both the home environment assessment standards and the permanency assessment criteria necessary for providing care for a child. (§ 16519.5, subd. (c)(1).) However, the Legislature provides that where the relative's home environment assessment has been approved and there is a

compelling reason for the placement based on the child's needs,[8] the child may be placed with that relative even if the permanency assessment portion of the resource family assessment is pending. (§ 16519.5, subd. (e)[9]; see, § 309, subd. (d), 361.3, subd. (a)(8)(A), 361.4.) The Legislature further states that section 16519.5, subdivision (e) does not limit the *county's* obligation under law to assess and give placement consideration to relatives and nonrelative extended family members and to place a child pursuant to section 309, 361.3, or 361.45. (§ 16519.5, subd. (e)(6).) There is nothing in section 16519.5 that limits the juvenile court's authority to meet its similar obligations under section 361.3 and exercise its judicial authority to make an independent decision concerning the child's placement, subject to the factors and limitations enumerated in section 361.3.

The juvenile court has the discretion to continue the section 366.26 hearing until the relative's home environment assessment or the permanency assessment is completed.

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8 The Legislature finds and declares: "Research shows that children in out-of-home care placed with relatives and nonrelative extended family members are more stable, more likely to be placed with siblings, and more likely to stay connected to their community and extended family."

9 Section 16519.5, subdivision (e)(1) provides that a county may place a child with a resource family applicant who has successfully completed the home environment assessment prior to completion of a permanency assessment only if a compelling reason for the placement exists based on the needs of the child.

> (A) The permanency assessment shall be completed within 90 days of the child's placement in the home, unless good cause exists based upon the needs of the child.
> (B) If additional time is needed to complete the permanency assessment-, the county shall document the extenuating circumstances for the delay and generate a timeframe for the completion of the permanency assessment. (*Ibid.*)

(Welf. & Inst. Code, § 352; see, e.g., *In re Charlotte C.* (2019) 33 Cal.App.5th 404 [juvenile court continued the section 366.26 hearing several times until the relatives' resource family assessment was completed].) In cases such as this one, the better practice is to require the Agency to provide substantial information about the status of the relative's RFA, including the timeframe for completion. (§ 352, subd. (a)(2) [continuance is limited to the period of time shows to be necessary].) The court may continue any hearing beyond the time limit within which the hearing is otherwise required to be held, provided that a continuance shall not be granted that is contrary to the interest of the child. (§ 352, subd. (a)(1).) In considering whether a continuance is contrary to the interest of the child, the court should consider the Legislature's explicit preference to place dependent children in the care of suitable relatives. (§§ 361.3, subd. (c)(1), 16519, subd. (d).)

In enacting the Resource Family Approval program, the Legislature did not amend the juvenile court's authority to determine placement under section 361.3. Consistent with the Legislative preference to place a dependent child in the care of a suitable relative and our holding in *Isabella G.*, we conclude that when a relative has come forward to request placement early in the dependency proceeding, the juvenile court may hold a section 361.3 hearing upon approval of the relative's home environment assessment by the Agency. (*In re C.B.* (2016) 2 Cal.App.5th 1112, 1117 [reviewing court must harmonize the various parts of the enactments by considering them in the context of the statutory frame work as a whole].) We recognize that "child safety and well-being are not achieved solely by ensuring that the home the child is placed in is free from physical

hazards and that adults living in the home do not have disqualifying criminal convictions or past reports of child abuse (§ 16519, subd. (a)(c)); however, any issues concerning the family's psychosocial history may be addressed under the factors specified in section 361.3.[10] Alternatively, the juvenile court has the authority to continue a section 361.3 hearing to allow the Agency to complete the full RFA assessment. (§ 16519.5, subd.

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10 (1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs.

(2) The wishes of the parent, the relative, and child, if appropriate.

(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

(4) Placement of siblings and half siblings in the same home, unless that placement is found to be contrary to the safety and well-being of any of the siblings, as provided in Section 16002.

(5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect.

(6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for, and to provide legal permanency for, the child if reunification is unsuccessful.

(7) The ability of the relative to do the following:

(A) Provide a safe, secure, and stable environment for the child.

(B) Exercise proper and effective care and control of the child.

(C) Provide a home and the necessities of life for the child.

(D) Protect the child from his or her parents.

(E) Facilitate court-ordered reunification efforts with the parents.

(F) Facilitate visitation with the child's other relatives.

(G) Facilitate implementation of all elements of the case plan.

(H) (i) Provide legal permanence for the child if reunification fails.

(ii) However, any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G) shall not be the sole basis for precluding preferential placement with a relative.

(I) Arrange for appropriate and safe child care, as necessary.

(8) (A) The safety of the relative's home. For a relative to be considered appropriate to receive placement of a child under this section on an emergency basis, the relative's home shall first be assessed pursuant to the process and standards described in Section 361.4. (§ 361.3, subd. (a).)

(e)(1)(A) [when a child is placed in a home before the permanency assessment is completed, the permanency assessment must be completed within 90 days unless there are extenuating circumstances for the delay].)

Although the juvenile court did not exercise its authority to independently consider Vincent's request to place his children with Aunt, we nevertheless conclude that under the particular and singular facts of this case, any error did not result in a miscarriage of justice. (Cal. Const., art. VI, § 13.)

D. *In View of the Children's Exceptional Needs, Any Error Was Harmless*

The California Constitution mandates that a judgment shall not be overturned unless the error resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13.) A "miscarriage of justice" occurs when it is reasonable probable a result more favorable to the appealing party would have been reached in the absence of the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).) To the extent any error implicated Vincent's constitutional interests in his children's management and care, the standard is whether the error was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24 (*Chapman*); *In re James F*. (2008) 42 Cal.4th 901, 914.) We conclude that under either standard, any error was harmless.

Although Vincent has a fundamental interest in his children's companionship, care, custody, and management, his interest in the children's placement does not outweigh Tatiana's and Elizabeth's interests in a home that is not only safe, stable, and permanent but one that can meet their extraordinary needs. The progressive nature of the children's conditions increases the importance of promptly resolving their custody status and

militates against the continuance of any hearing to allow completion of the resource family assessment. (§ 352.) Even if Aunt had been approved as a resource family, the juvenile court is required, first and foremost, to consider the best interests of the child, including special physical, psychological, educational, medical, or emotional needs, in determining whether to place the child with the relative. (§ 361.3, subd. (a)(1).) The court must also consider whether the relative would exercise proper, effective care, and control of the child. (§ 361.3, subd. (a)(7) (B).)

The record shows that Tatiana and Elizabeth have a severe neurological disorder that results in the progressive loss of cognitive and motor abilities. They need assistance with feeding, bathing, and dressing. The children require dedicated and conscientious care. Their Caregivers were trained to provide services to medically fragile children. Tara had been caring for special needs children for more than 10 years. Tatiana appreciated "how hard Ms. Tara work[s] [and] how hard it is to wake up early in the morning to get us out of the house and on time." The record shows that the quality of the care they were providing to the children was exemplary. Although the children were diagnosed with a condition that is usually progressive, their health and skills had improved since being with the Caregivers. CASA said due to the Caregivers' efforts, the children appeared to be in the best physical condition they had ever experienced. In the long-term, if the children's prognoses are correct, the Caregivers' skill and ability to provide appropriate care to medically fragile children will be essential.

Although the record shows that Aunt was dedicated to Tatiana and Elizabeth, the record supports the reasonable inference she would not be able to meet the children's

exceptional needs as well as their caregivers were meeting them. Aunt's physical limitations made it difficult for her to assist the children. Her supervision of the children resulted in a child abuse referral. Aunt encouraged the children to keep their inappropriate activities secret and when they did not, asked them to retract their statements. From this we draw the reasonable conclusion that Aunt's supervision had the potential to prevent the children from receiving appropriate behavioral and therapeutic services. In this regard, Aunt did not exercise proper and effective care and control of the children. (§ 361.3, subd. (a)(7) (B).)

In determining whether placement with the relative is appropriate, the juvenile court also considers the wishes of the children. (§ 361.3, subd. (a)(2).) The record shows both children love their aunt. However, Elizabeth never wavered in her desire to remain with her Caregivers. By the time of the section 366.26 hearing, Tatiana and Elizabeth called their Caregivers "mom" and "dad" and wanted to be adopted by them.

We therefore conclude that even if the juvenile court had held a section 361.3 hearing, in view of the singular and particular facts of this case, the children's best interests would clearly dictate their continued placement with their caregivers. (§ 361.3, subd. (a)(1).) Notwithstanding the outcome of Aunt's resource family assessment, in view of the children's extraordinary needs and the Caregivers' ability to meet those needs, any error in denying Vincent's request for a hearing under section 361.3 was harmless beyond a reasonable doubt. (*Chapman, supra,* 386 U.S. at p. 24; *Watson, supra,* 46 Cal.2d at p. 836.)

DISPOSITION

The findings and orders are affirmed.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

DATO, J.